

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 28.59
Title 14, California Code of Regulations
Re: Shiner Perch, Transport of Surfperch

- I. Date of Initial Statement of Reasons: March 15, 2002
- II. Date of Pre-adoption Statement of Reasons: May 24, 2002
- III. Date of Final Statement of Reasons: June 21, 2002
- IV. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: April 4, 2002
Location: Long Beach, CA
- (b) Adoption Hearing: Date: June 20, 2002
Location: South Lake Tahoe

- ## V. Update:

Section X (a) was updated to provide greater detail and clarity.

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations.

One comment in support of the proposed regulatory action was noted in the Pre-adoption Statement of Reasons. No additional public comments, written or oral were received during the public comment period.

- ## VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: The primary alternative considered was to exempt shiner perch from the closed season in the bay, and to also reduce the daily bag limit for shiner perch from the recently adopted 20-fish per day during the open season, to a lesser number (6 to 12 shiner perch per day) during the closed season in the bay. This alternative was rejected on the basis that shiner perch are sufficiently abundant in the bay to justify retaining the recently adopted 20-fish bag limit year-round.

With regard to repealing the restriction on the movement of vessels in the bay that have surfperch aboard that are taken outside the bay, efforts were made to reword this provision to make it more readily enforceable. This effort was unsuccessful and the decision to repeal the provision was deemed best in the greater interests of maintaining an ability to effectively enforce the seasonal closure on surfperch in the bay.

- (b) No Change Alternative: If an exemption for shiner perch to the seasonal surfperch closure in the bay is not adopted on a long term basis (following the emergency exemption of shiner perch), the California halibut and striped bass recreational fisheries and bait suppliers will continue to be adversely affected by the current prohibition on take and possession of shiner perch in the future following repeal of the emergency regulation. Also, unless the provision governing vessel movement in the bay during the seasonal surfperch closure is repealed, enforcement of the seasonal surfperch closure is expected to continue to be compromised.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Adoption of the proposed changes will benefit commercial bait harvesters and bait and tackle shop owners that supply shiner surfperch to recreational anglers during the seasonal prohibition on take or possession of surfperch in the bay. The current emergency regulation exempts sport anglers from the seasonal prohibition on take or possession of shiner surfperch in the bay, and will be repealed July 25, 2002. The emergency exemption aids the commercial bait suppliers and bait and tackle shops that provide shiner surfperch to anglers seeking California halibut and striped bass. By adopting the proposed exemption on a permanent basis, these bait suppliers and tackle shops will avoid expected annual losses in future years of between \$35,000 and \$75,000 because anglers will continue to be able to purchase (possess for use as bait) shiner surfperch during the seasonal spring-summer surfperch closure in the bay.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:
- The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Updated Informative Digest/Policy Statement Overview

Under regulations adopted on December 7, 2001 by the Fish and Game Commission (Commission) the take or possession of all surfperch of the family Embiotocidae, including shiner surfperch (*Cymatogaster aggregata*) (commonly termed shiner perch), is prohibited in San Francisco and San Pablo bays (bay) during the period April 1 through July 31 (Section 28.59, Title 14, CCR). Also under existing regulations, vessels entering the bay with surfperch aboard that were taken outside of the bay must remain underway without fishing gear in the water until arriving at their home port or launch site (Section 28.59, Title 14, CCR). However, emergency action taken by the Commission became effective on March 26, 2002 exempting shiner perch from the prohibition on the take or possession of surfperch in the bay during the period April 1 through July 31. The emergency regulation approved by the Commission is scheduled to expire in mid to late July of this year.

Regulatory changes being proposed as a part of this rulemaking would exempt shiner perch from the current prohibition on the sport take or possession of surfperch in the bay during April 1 through July 31 on a permanent basis. Also, changes being proposed as a part of this rulemaking would eliminate the provision of Section 28.59, Title 14, CCR that requires vessels entering the bay with sport-caught surfperch aboard (that were taken outside the bay) to remain underway without fishing gear in the water until arriving at their home port or launch site.

These changes are being proposed to ensure that the popular sport fisheries for California halibut and striped bass in San Francisco and San Pablo bays are not unduly constrained due to anglers being unable to take or possess shiner perch (for bait). Also, the regulation changes are expected to strengthen the Department's ability to enforce the seasonal surfperch closure in these bays by elimination of the provisions governing the movement of vessels entering the bays during the surfperch closure when surfperch taken outside the bay are aboard those vessels.

Section 28.59 is amended to read:

28.59. Surfperch.

(a) Open season and areas: Open all year, except surfperch of the family Embiotocidae, ~~with the exception of shiner surfperch (*Cymatogaster aggregata*),~~ may not be taken or possessed by a person in San Francisco Bay and San Pablo Bay between April 1 and July 31, inclusive. ~~Vessels entering San Francisco or San Pablo bays with surfperch aboard that are taken outside of San Francisco and San Pablo bays must remain underway without fishing gear in the water until arriving at their home port or launch site.~~

(b) Limit: Five in any combination of species (includes all members of the family Embiotocidae), except that ~~shiner surfperch taken in ocean waters, and during the open season in San Francisco Bay and San Pablo Bay,~~ the daily bag limit for shiner surfperch is twenty.

(c) Minimum size: redbtail surfperch, ten and one-half inches total length. All other surfperch, none.

NOTE

Authority cited: Sections 200, 202, 205, 215, and 220, Fish and Game Code.

Reference: Sections 200, 202, 205, 206, 215, and 220, Fish and Game Code.